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DEPARTMENT OF JUSTICE APPROPRIATION AUTHORIZATION ACT, FISCAL YEARS 1988 AND 1989

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Mr. BYRD (for Mr. BIDEN), from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 938]

The Committee on the Judiciary to which was referred the bill (S. 938) to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal years 1988 and 1989 and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSES OF THE BILL

The purposes of the bill, as reported by the Committee, are to authorize the appropriation of funds to carry out the operations of the Department of Justice in fiscal years 1988 and 1989 and to authorize on a permanent basis certain expenditures and activities of the Department. The bill is intended to provide policy guidance to the Department in the implementation of its activities, including

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its enforcement of drug control, civil rights, immigration and antitrust laws.

II. BACKGROUND

The Department of Justice has operated without an authorization bill since fiscal 1981. The lack of an authorization bill since then has resulted in Department activities being authorized on a continuing basis either in a piecemeal fashion or in the annual appropriations bill. This has hampered the Committee's over-all oversight responsibility, permitting only a general review of the Department's programs and budgets. As Senator Joseph R. Biden, Jr., the Chairman of the Committee, stated during consideration of this bill:

> . . . In recent years, the Judiciary Committee has, in essence, relinquished its jurisdiction [to authorize] programs to the Appropriations Committee. The Appropriations Committee, with its broad responsibilities, is not in a position to carry out the oversight and review of the Department that is warranted. . . .

On February 5, 1987, the Chairman and Senator Strom Thurmond, the Ranking Minority Member, introduced S. 517, the Department's proposed authorization, by request. Both sponsors believed that changes in that proposal were necessary, and the Chairman called for hearings to examine the activities of the 17 separate appropriations within the Department of Justice.

The last hearing was concluded on March 24, 1987, after which the Chairman and Ranking Minority Member completed the drafting of their own authorization bill. As has been the tradition between Senator Biden and Senator Thurmond, there was agreement to work toward compromise legislation that each could support. Incorporating the suggestions of all Subcommittee Chairmen and members of the Minority, S. 938 was introduced on April 7, 1987, and by unanimous vote, the Committee reported it favorably, without amendment on April 9, 1987.

III. EXECUTIVE SUMMARY

After conducting 8 days of extensive oversight hearings and incorporating the views of a bipartisan majority of its Members, the Judiciary Committee on April 9, 1987 passed a 2-year authorization bill for the Justice Department. The Department has operated without an authorization bill since 1981. The key features of the legislation are:

Two-Year Authority.—Chairman Biden proposed a 2-year authorization cycle to help address management and planning deficiencies that have plagued the Department for decades. While each appropriation act must be for a single fiscal year, the Committee has concluded that the Department—and the Committee—would be served more effectively if the planning and consideration of the Department's budget were conducted on a 2-year authorization cycle.

As a result of longer-range assurances of program funding, the Department will be able to carry out its programs more effectively. By concentrating on budgetary oversight once every 2 years, the

Committee will be able to give more thoughtful consideration to the proper funding of the numerous programs and activities of the Department. Additionally, the Committee will be able to devote uninterrupted attention to detailed substantive oversight of specific programs and examine future program plans and budgets over an extended period.

In arriving at an authorization of appropriations for the Department of Justice for fiscal 1988 and 1989, the Committee has, for each year, started with base budget figures for 1987 and added funds to support certain program increases as well as uncontrollable rising costs. The amounts authorized for fiscal 1989 are predicated on the fiscal 1988 funding levels, plus any additional money necessary to cover uncontrollable increases in costs and the annual cost for programs that will be initiated in 1988.

The Committee anticipates that some adjustments to these second-year funding levels will be necessary, and the bill provides an appropriate process for making these modifications.

Permanent Enabling Legislation.—The Committee concluded that some of the Department's routine activities, such as the authority to travel, to purchase vehicles, uniforms and guns, and to pay witness expenses should be made a part of permanent law. During past periods of threatened or actual lapses in the Department's continuing authorities, routine and traditional Department activities have been disrupted.

Undercover Investigations.—The bill contains authorizations and exemptions for the conduct of undercover investigations by the Department's law enforcement bureaus. The provisions codify the authorities first granted to the Federal Bureau of Investigation and the Drug Enforcement Administration in 1979 and extend similar authority to the Immigration and Naturalization Service and the United States Marshals Service.

Because of the sensitive nature of these authorities, the Committee has included a sunset provision. These authorities will be repealed effective October 1, 1989. The Committee believes that the undercover authorizations and exemptions contained in the bill should eventually be made permanent, along with appropriate restrictions on such operations. However, the Committee wants to evaluate the Department's implementation of these authorizations before making them permanent.

Antitrust.—The Committee has rejected the Administration's proposal to eliminate 100 positions in the Antitrust Division and to merge the division's appropriation with the appropriation for General Legal Activities. The Committee believes that these positions and the separate appropriation are necessary to ensure effective antitrust enforcement.

Immigration.—The Committee recognizes that the Immigration Reform and Control Act of 1986 has imposed massive new responsibilities on the Department and supports the additional resources requested. However, the Committee has frozen at $140 million the funds requested for detention and deportation. The Committee will want to conduct a thorough review of the use of the fiscal 1988 appropriations for detention and deportation before considering additional funds for fiscal 1989.

State and Local Criminal Justice Assistance.—The bill does not include the Administration's proposed cuts in or elimination of state and local criminal justice assistance programs. The Committee believes that Federal, State and local governments must operate as partners in the effort to reduce crime and drug trafficking nationwide.

IV. SECTION-BY-SECTION DISCUSSION

A. SHORT TITLE

The short title of the bill is Department of Justice Appropriations Authorization Act for Fiscal Years 1988 and 1989.

TITLE I

B. GENERAL ADMINISTRATION

Fiscal Year 1988: $103,513,000

Fiscal Year 1989: $138,000,000

The Department of Justice General Administration appropriation finances the Department's policy, review and administrative functions. The offices of the Attorney General, the Deputy Attorney General and the Associate Attorney General are funded under this appropriation. The General Administration appropriation also supports the Department's Offices of Professional Responsibility; Intelligence Policy and Review; Legal Policy; Public Affairs; Legislative Affairs; and Liaison Services. The two major review functions funded under this appropriation are the Office of the Pardon Attorney and the Executive Office for Immigration Review.

The Department's 1988 budget requested an increase in the General Administration appropriation of 8.3 percent above the base increases. These additional funds are to be used primarily for: current personnel and workload demands; increased intelligence and foreign counterintelligence review functions; increased responsibilities for the Executive Office of Immigration Review; maintenance and repair of facilities; and, to a substantial extent, for necessary improvements in automation.

The Committee generally supports these program enhancements, particularly the Department's efforts to improve efficiency and productivity through appropriate progress in automation. The Committee notes, however, that it will continue its strong oversight of automation efforts.

C. WORKING CAPITAL FUND

Fiscal Year 1988: $4,000,000

The Department of Justice Working Capital Fund was established by Congress in 1975 to supply centralized services within the Department. One of the principal operations financed by the Working Capital Fund is the Data Center in Washington, D.C., which provides mainframe computer support for various Department functions, most significantly, over-all personnel and accounting op-

erations. It also meets the specific data base management needs of the Bureau of Prisons.

The Data Center is located in a building ill-suited to support modern computer and telecommunications equipment. The lack of a reliable back-up power supply means risking shutdown of a facility whose program responsibilities require that it be in operation 24 hours a day, seven days a week. In addition, there apparently are security problems at the present location.

The Committee supports this one-time appropriation to fund the Department's planned move of the Data Center. In addition, $1,000,000 of this amount will be used to support the consolidation of the Department's telecommunications system.

D. UNITED STATES PAROLE COMMISSION

Fiscal Year 1988: $12,253,000

Fiscal Year 1989: $12,865,000

First established by Congress in 1930, the Parole Commission has independent authority to grant parole of Federal prisoners and to supervise parolees. The Commission's 1988 fiscal year request for a 5.2 percent increase in appropriations above base levels appears to the Committee to be reasonable in light of the additional demands arising from a growing prison population.

The Committee notes that as a result of the Comprehensive Crime Control Act of 1984 (P.L. 98-473) and the recommendations of the Sentencing Commission established under the Act, the Parole Commission will be phased out. Parole Commission activities should begin to decrease in late 1989.

E. GENERAL LEGAL ACTIVITIES

Fiscal Year 1988: $303,485,000

Fiscal Year 1889: $315,114,000

This appropriation funds the Civil, Civil Rights, Criminal, Land and Natural Resources, and Tax Divisions as well as the Solicitor General's Office, the Office of Legal Counsel, the United State's participation in INTERPOL, the operations of any Independent Counsel appointed under the Ethics in Government Act, and the processing of employment discrimination cases by the Special Counsel established under the Immigration Reform and Control Act of 1986. The Committee has authorized appropriations for these functions at the level requested by the Department, which represents a program increase of 13.1 percent.

The major program increases are the result of: additional cases filed as a result of Internal Revenue Service initiatives; additional resources needed to combat organized crime; the increased workload of Department of Defense procurement fraud cases; increased civil anti-fraud, commerical and tort litigation; greater expenditures on anti-terrorism and international matters; litigation increases arising out of the statutory responsibilities of the Land and Natural Resources Division; the implementation of 24-hour-a-day operations for INTERPOL; and the new activities of the Special

Counsel appointed under the Immigration Reform and Control Act of 1986.

The Committee's authorization for General Legal Activities also allows a transfer of $75,000 from the Alien Property Fund to pay for administrative expenses of the fund. Finally, the Committee has supported making $24,718,000 of this appropriation available without fiscal year limitation to pay for the automation of the legal activities funded by this appropriation as well as for automation of legal activities funded by the appropriations for the Antitrust Division, the United States Attorneys, and General Administration.

F. ANTITRUST DIVISION

Fiscal Year 1988: $48,510,000

Fiscal Year 1989: $51,497,000

The Committee has rejected the Administration's efforts to reduce appropriations for the Antitrust Division. The Administration had sought to eliminate 100 positions in the Division. The Committee restored those positions and increased the requested appropriation by $2,109,000. The Committee has also refused to adopt the Administration's proposal to make the Division's appropriation part of the appropriation for General Legal Activities. The Committee believes that these positions and the separate appropriation are necessary to ensure effective antitrust enforcement.

G. FOREIGN CLAIMS SETTLEMENT COMMISSION

Fiscal Year 1988: $510,000

Fiscal Year 1989: $504,000

The Committee has authorized appropriations for the Foreign Claims Settlement Commission at base levels. The Committee notes that this funding level is 17.5 percent below last year's funding due to the nonrecurrence of costs for completed claims programs involving the Provisional Military Government of Socialist Ethiopia. Funding for the Commission in fiscal 1989 will decrease further because of the continuing reduction in the Commission's workload.

H. UNITED STATES MARSHALS SERVICE

Fiscal Year 1988: $216,092,000

Fiscal Year 1989: $230,000,000

The Committee has authorized appropriations for the United States Marshals Service at the level requested by the Administration. This funding level represents a 9.2 percent increase above base levels. The program enhancements that account for these increases principally involve judicial security, the handling of Federal prisoners, witness security, and computer and telecommunications improvements.

The Committee has also included authority for $1,350,000 to remain available until expended for the construction of witness

"safe sites". This is the same amount made available for this purpose last year.

I. SUPPORT OF UNITED STATES PRISONERS IN NON-FEDERAL INSTITUTIONS

Fiscal Year 1988: $76,914,000

Fiscal Year 1989: $80,000,000

This appropriation is used to reimburse State and local detention facilities for the costs of the care, housing and safekeeping of Federal prisoners who are in the custody of the Marshals Service. The 6.2 percent increase above base levels reflects increases in prosecutions and the resulting increase in the number of inmate days that must be covered. The Committee has specified that these funds will be available without fiscal year limitation.

The appropriation also provides $5,000,000 for the Cooperative Agreement Program. Under this program the Federal Government funds the construction and/or renovation of State and local detention facilities. In exchange, the State or local government agrees to provide guaranteed bed space for Federal prisoners at negotiated rates.

J. FEES AND EXPENSES OF WITNESSES

Fiscal Year 1988: $37,259,000

Fiscal Year 1989: $38,400,000

This appropriation covers payment to and expense of all witnesses appearing on behalf of the United States in Federal court. The 4.8 percent increase above base levels reflects an increase in litigation activity and in the use of expert witnesses.

K. COMMUNITY RELATIONS

Fiscal Year 1988: $24,123,000

Fiscal Year 1989: $30,273,000

The Committee has funded the Community Relations Service at the level requested by the Administration. This represents a decrease of 7.3 percent from base levels. More than 75 percent of the decrease is a result of reductions in and consolidation of programs for the processing and care of Cuban and Haitian entrants. The remaining 25 percent reduction will be achieved by cutting administrative costs.

The authorization specifies that in both 1988 and 1989, $21,740,000 shall remain available without fiscal year limitation to pay for grants, reimbursable agreements and contracts under the Refugee Education Assistance Act of 1980.

L. UNITED STATES ATTORNEYS

Fiscal Year 1988: $413,555,000

Fiscal Year 1989: $431,194,000

The fiscal year 1988 authorization represents an increase of $28,124,000 and 542 permanent positions over the 1987 base levels. Specifically, the Committee supports the Administration's request for the following increases: (1) $18,562,000 and 373 positions for narcotics and dangerous drug prosecutions; (2) $2,557,000 and 44 positions for the Organized Crime and Drug Enforcement Task Forces; (3) $1,561,000 and 28 positions for white collar crime prosecutions; (4) $3,970,000 and 80 positions for affirmative civil litigation; (5) $452,000 for legal education; (6) $522,000 and 17 positions for the Law Enforcement Coordinating Committee/Victim-Witness program; and (7) $500,000 for increased security at the United States Attorneys and Organized Crime/Drug Enforcement Task Forces offices.

The Committee strongly supports the proposed increases in prosecutorial resources. The Committee emphasizes that the criminal justice system is indeed a system—a group of interdependent units operating collectively. In order for the system to work effectively, increases in one area must be complemented with corresponding increases for the other components. The significant increases in investigative resources approved by the Committee, particularly in the drug enforcement area, must be matched by increased resources for prosecutions, adjudication and corrections. The authorization bill, as reported by the Committee, seeks to avoid "front loading" the system, by seeking complimentary increases in each component of the Federal criminal justice system.

M. UNITED STATES TRUSTEE SYSTEM FUND

Fiscal Year 1988: $53,525,000

Fiscal Year 1989: $60,400,000

The Committee has supported the Administration's request for a 36 percent increase in appropriations for the Trustee program. This additional cost arises from the rapid expansion of the trustee program from 18 to 88 Federal judicial districts by 1988. The program expansion is expected to be self-supporting beginning in 1989.

N. ASSETS FORFEITURE FUND

The Committee has imposed a limit on the amount that may be paid from the Assets Forfeiture Fund to cover expenses incurred by the Department of Justice. This $50,000,000 cap does not limit the amount that can be expended for expenses such as discharging valid liens against seized property. In addition, assets shared with state and local authorities would also be exempt from the cap.

The Committee continues to believe that the "equitable sharing" of seized assets with state and local law enforcement agencies is an important means of fostering cooperation between Federal, State and local agencies. The Department has taken steps to expand this

program since its enactment as part of the Comprehensive Crime Control Act of 1984. In 1986 more than $24 million were transferred to state and local agencies. The Committee urges the Department to continue expanding this important program.

The Committee is also concerned about the management of the Assets forfeiture fund. For example, the General Accounting Office has documented that the department has exercised little oversight of the handling of seized cash. The Committee urges the Department to conduct a review of its forfeiture management program, including a review of the internal controls, long-term plans, and information systems necessary to effectively and efficiently administer and manage the Assets Forfeiture Fund.

O. FEDERAL BUREAU OF INVESTIGATION

Fiscal Year 1988: $1,484,421,000

Fiscal Year 1989: $1,512,121,000

The authorization for fiscal 1988 represents an increase of 5.4 percent ($75,775,000 and 718 permanent positions) above the 1987 base level. The Committee supports the administration's request for the following increases: (1) $1,956,000 and 12 agent positions to support the Bureau's participation in the Organized Crime and Drug Enforcement Task Forces; (2) $13,588,000 and 245 positions for the organized crime program; (3) $2,003,000 and 80 positions for the white collar crime program, including increased personnel for the Bureau's Department of Defense procurement fraud and bank fraud and embezzlement investigations; (4) $24,153,000 and 50 positions for technical field support and equipment, including $11.2 million for development, implementation and maintenance of the Department's digital voice privacy radio system and $13 million for the construction of an integrated Drug enforcement Administration FBI engineering research facility; (5) $27,425,000 and 292 positions for other high-priority investigative programs; (6) $2,500,000 to complete the FBI's 250-student dormitory facility; and (7) $4,150,000 and 39 positions for administrative services.

After hearing testimony from their FBI Director William H. Webster on the Bureau's activities and accomplishments, the Committee concluded that the Bureau has continued its impressive performance in numerous areas, including organized crime investigations, white collar crime investigations, and domestic security and terrorism programs. The Committee commends the Bureau for its involvement in the organized crime cases in New York City, which resulted in the conviction of some of the most notorious underworld criminal figures in the country.

While the Committee was generally impressed with the Bureau's accomplishments in 1986, the Committee is concerned about the management of several important Bureau programs. The first is the construction of the joint DEA–FBI Engineering Research Facility. While the Committee continues to support the increase dramatically since last year. Under questioning from Senator Thurmond, the Ranking Minority Member, Mr, Webster indicated that the initial cost estimates were understated. In fact, the original estimate of $9 million in 1985 has grown to $36 million this year.

The Committee is also concerned about the development and implementation of the FBI's voice privacy program. According to the General Accouting Office:

> The FBI's voice privacy program [DVP] has experienced substantial increases in estimated and actual costs, and is significantly behind the original completion schedule. FBI cost estimates for implementing DVP systems in all 59 field offices grew steadily from $79.3 million in January 1982, to $204.4 million in January 1984—over a 150 percent increase in two years. Even though it calculated the $204.4 million estimate over 3 years ago, the FBI cited this amount as the official program cost estimate in its June 1986 responses to [a House Subcommittee] for the fiscal year 1987 FBI authorization hearings . . . The FBI's $204.4 million estimate for the nationwide voice privacy program appears to be unrealistic.

The GAO concluded that the significant delays and cost overruns suggest that the FBI did not adequately analyze its needs before contracting for and acquiring its voice privacy system. The Committee urges the FBI to respond fully to the recommendations made by the GAO. Further, the Committee recommends that the FBI review all of its major equipment procurement programs, including those associated with its fingerprint identification systems, to determine whether such programs could encounter problems similar to those experienced in the voice privacy program.

P. DRUG ENFORCEMENT ADMINISTRATION

Fiscal Year 1988: $522,047,000

Fiscal Year 1989: $563,046,000

The 1988 authorization represents an increase of $24,552,000 and 108 permanent positions over the 1987 base level. The Committee supports the Administration's request for the following increases: (1) $7,209,000 and 56 positions for increased domestic drug enforcement, including 20 agent and 10 support positions for the establishment of Asset Removal Teams; (2) $3,996,000 and 28 positions for research, engineering and technical operations, including expansion in the DEA's in-house devices and optical equipment; (3) $12,417,000 and 15 positions to allow DEA to implement Phase II of its programs to make ADP equipment more secure (TEMPESTing); $930,000 and 9 positions for executive direction and control, including 6 agent positions to provide improved security of staff and facilities.

Q. IMMIGRATION AND NATURALIZATION SERVICE

Fiscal Year 1988: $1,093,520,000

Fiscal Year 1989: $1,066,433,000

The Committee is authorizing the full budget request of the Immigration and Naturalization Service (INS) in recognition of the fact that the Immigration Reform and Control Act of 1986 gives the

agency massive new responsibilities. The Committee has frozen at $140 million the funds requested for detention and deportation. The Committee will want to conduct a thorough review of the use of fiscal 1988 appropriations for these activities before considering any additional funding for fiscal 1989.

R. FEDERAL PRISON SYSTEM

Fiscal Year 1988: $981,694,000

Fiscal Year 1989: $1,056,509,000

The Committee is keenly aware of ths substantial overcrowding in Fedeal prisons. The appropriations that have been authorized will ensure the construction of two new medium-security prisons as well as a new detention unit. Other program enhancements under this appropriation will include: completion of an institution under construction; replacement of vehicles; medical training; improvements in automatic data processing; and subsistence for a prison population that is projected to reach a daily average of 44,878. Program enhancement will continue in fiscal 1989, with the addition of another $210,000,000 for prison construction.

The Committee's authorization for the Federal Prison System actually consists of three separate authorizations: for salaries and expenses; for the National Institute of Corrections; and for construction funded through the Buildings and Facilities Account. The respective funding levels for these three accounts in fiscal 1989 are: $760,851,000; $10,509,000; and $210,334,000. For fiscal 1989, the funding levels are $835,000,000, $11,000,000 and $210,000,000. Appropriations authorized for the National Institute of Corrections and for the buildings and facilities account are authorized without fiscal year limitation.

The Committee bill also authorizes the payment of a $300 uniform allowance for employees of the Federal Prison System who are required to wear uniform.

S. OFFICIAL RECEPTION AND REPRESENTATION COSTS

The Committee has included in its bill a provision (Section 102) that allows the Department to spend up to $75,000 of its appropriated funds for the purpose of paying the cost of conducting official receptions and the cost of representation at official functions. The Committee believes that payment of such expenses is often a necessary part of conducting the government's business. The Committee also believes, however, that the amount of funds available for this purpose should be strictly limited and controlled. Separate authorization is made elsewhere in the bill for similar expenditures by the Federal Bureau of Investigation (Sec. 101(12)(F)) and the Drug Enforcement Administration (Sec. 101(13)(E)).

T. ADJUSTMENT TO FUNDING LEVELS

The Committee recognizes that it is not possible for the Department of Justice to accurately project its funding needs two years in the future. As the Department gains experience in operating on a two-year budget authorization cycle, such projections may be ex-

pected to become more reliable. Nevertheless, some adjustments to authorization funding levels will often be necessary.

The Committee, in Section 103, has provided for two adjustment mechanisms. The first authorizes any additional appropriations that may be needed to pay for increased costs arising from increases in salaries or employees benefits. The second provision requires the Committee to consider requests from the Department for increases in fiscal 1989 funding levels. The Committee expects to be responsible to such requests, provided that a clear justification has been established.

TITLE II.—PERMANENT ENABLING LEGISLATION

A. INTRODUCTION

Title II of S. 938 adds to new sections (577 and 578) to Title 28 of the United States Code. Section 577 contains the financial management authorities for the Department of Justice, as well as specific authorities that are applicable to individual law enforcement bureaus within the Department. The Committee has previously supported the condification of many of these authorities. (See Senate Report 98–498.)

Section 578 contains authorizations and exemptions for the conduct of undercover investigations. Analogous authorizations were first made available to the Department in its 1979 Authorization Act. (Public Law 95–624) Section 578 would codify these authorities for the Federal Bureau of Investigation and the Drug Enforcement Administration. Because of the sensitive nature of these authorities, the Committee has included a sunset provision that would repeal them on October, 1, 1989. Similar undercover authorities would be available on a 2-year test basis for the Immigration and Naturalization Service and the United States Marshals Service. The Committee has also required the Department to publish comprehensive guidelines for the authorization of undercover investigation.

B. GENERAL AUTHORITIES (28 U.S.C. 577(a))

Section 577(a) of Title 28 contains 15 financial management authorities that are generally available to any component of the Department of Justice. Certain of these authorities, however, are applicable only to the Department's law enforcement bureaus.[1] Any such restriction is indicated by a given subsection's requirement that the authority by used for a "law enforcement" purpose. (See 28 U.S.C. 577(g).)

The statutory recipient of these various authorities is the Attorney General, because he is the head of the Department of Justice. (See 28 U.S.C. 503 and 509.) The Committee expects, and has been advised by the Department, that the Attorney General will issue necessary regulations providing for the appropriate delegation of these authorities. The Committee does not intend to give any addi-

[1] The law enforcement bureaus of the Department of Justice are the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisions, and the United States Marshals Service.

tional authority but believes this approach is the most orderly way to authorize Department activities.

Section 577(a)(1) authorizes payment of witness fees and expenses and includes the long-standing prohibitions against paying more than one witness fee for one day of attendance in court. The Committee has included a provision that exempts the hiring of expert witnesses from the possible applicability of federal competitive procurement requirements that are contained in Titles 15 and 41 of the United States Code.

Section 577(a)(2) authorizes advancement payments. Such advances have been authorized in the past for specific purposes, e.g., cooperative agreement payments. The Committee is mindful of the general fiscal policy limiting advance payments and expects that the Attorney General will issue appropriate regulations to ensure that this authority is used only in limited and necessary situations. This section also includes long-standing authority allowing travel advances to undercover agents to be considered public monies.

Section 577(a)(3) authorizes payments for construction and renovation. This authority applies only to the activities of the Bureau of Prisons and the Immigration and Naturalization Service in the United States, which would include Puerto Rico and U.S. possessions. (See 28 U.S.C. 577(g).) While this section does not authorize construction or renovation solely for general administrative office space requirements, construction or renovation is authorized if direct laws enforcement functions will be served.

Section 577(a)(4) authorizes the lease or purchase of motor vehicles. Law enforcement vehicles are exempted from annual purchase price limitations because of the extra costs normally incurred as a result of additional features that are necessary and appropriate for vehicles used in law enforcement.

Section 577(a)(5) authorizes purchases of firearms and ammunition for agents of the Department't law enforcement bureaus and their participation in firearms matches. Similar purchases may be made for security personnel, provided that they have received necessary training to ensure appropriate and safe use of firearms.

Section 577(a)(6) authorizes the Department's law enforcement bureaus to lease "look-out posts" and other surveillance sites on a confidential basis, e.g., without regard to property management laws that would otherwise result in the disclosure of a law enforcement presence at the site. This authority applies only to surveillance sites. Authority to establish proprietary corporations is included in another statute. That authority exists elsewhere under the procedures established in 28 U.S.C. 578.

Section 577(a)(7) authorizes the acquisition of aircraft by the Department's law enforcement bureaus.

Section 577(a)(8) authorizes payment of miscellaneous and emergency expenses. The Committee deleted a provision in prior annual versions of this authority that would have allowed such expenses to be authorized by the Assistant Attorney General for Administration. Authorization for such expenditures may now be given only by the Attorney General, the Deputy Attorney General or the Associate Attorney General.

Section 577(a)(9) authorizes payments for the expenses of official receptions and the costs of the Department's representation at offi-

cial functions. The amount that could be expended for such purposes is limited by specific provisions in S. 938. (See Sections 101(14)(F), 101(15)(E) and 102.)

Section 577(a)(10) authorizes payments for attendance at meetings.

Section 577(a)(11) authorizes payments for the services of experts and consultants. A government agency cannot make such payments in the absence of explicit authority, such as the authority provided in this section. (See 5 U.S.C. 3109.)

Section 577(a)(12) authorizes payments for the services of interpreters and translators who are not citizens of the United States. The Committee expects that the Attorney General will issue appropriate guidance to ensure that to the greatest extent possible, only citizens of the United States will be used as interpreters or translators. The Committee, however, recognizes that the use of non-citizen interpreters and translators will sometimes be necessary.

Section 577(a)(13) authorizes payment of rewards, the purchase of evidence, and payments for information by the Department's law enforcement bureaus.

Section 577(a)(14) authorizes the purchase of insurance for motor vehicles, boats and aircraft used on official business overseas. The government is normally a self-insurer, but obtaining private insurance overseas is often necessary in order to comply with local law and/or prudent business practices.

Section 577(a)(15) authorizes payment of certain personnel benefits for employees of the Department of Justice who serve in overseas posts. The Foreign Service Act of 1980 provides a number of such benefits for overseas personnel. Seven of these benefits will also be available to Department of Justice personnel. They are: travel expenses for family members (22 U.S.C. 4081 (3)); medical care (22 U.S.C. 4081 (5)); travel for rest and recuperation (22 U.S.C. 4081(5)); family visitation travel (22 U.S.C. 4081(9)); children's travel for visitation with divorced or separated parents (22 U.S.C. 4081(15)); and health care benefits.

C. FEDERAL BUREAU OF INVESTIGATION (28 U.S.C. 577(b))

The Title II authorizations for the Federal Bureau of Investigation (28 U.S.C. 577(b)) provides general authority for the FBI to pay for the conduct of its activities. Specific authority is cited for expenditures for three of the FBI's statutory missions: detecting and prosecuting crimes (577(b)(1)(A)); protecting the life of the President and the life of the Attorney General (577(b)(1)(B)); and investigating matters under the control of both the Department of Justice and the Department of State (577(b)(1)(C)). Substantive authority to conduct these activities, with the exception of the protection of the Attorney General, is set forth in 18 U.S.C. 533. The Committee, as it has in the past, views the protection of the Attorney General as a necessary and appropriate function of the FBI. (*See* Senate Report 98-498, p. 24.)

Two additional authorizations relate to the FBI's collection and dissemination of identification records. Section 577(b)(1)(D) authorizes the collection of identification information and its exchange with authorized Federal, State and local government officials, pro-

vided that the unauthorized dissemination of such information would result in the exchange arrangement being subject to cancellation. This authority was made available to the FBI in the Department's 1980 Authorization Act (Public Law 96-132) and has been in effect since that time. The Committee views this as a routine noncontroversial authority and has, accordingly, included it as a permanent authority.

The Committee modified the portion of this section that allows exchanges of identification records to be made with "other institutions." The Committee substituted words allowing such exchanges to be made with "such other institutions, as authorized by law." This modification ensures that there is appropriate legal authority for any exchange of records. The Committee believes this modified language includes authority for the exchange of identification records with federally insured or chartered banks, as authorized by the Department's 1973 Appropriations Act (Public Law 92-544).

Section 577(b)(2) authorizes the FBI to collect fees for the processing of noncriminal employment and licensing fingerprint identification records. These fees may be retained by the FBI to offset costs to the extent specified in appropriations acts. S. 938 specifies elsewhere that for fiscal years 1988 and 1989, the amount of fees that may be retained in each fiscal year shall be $17,500,000. (See Section 101(14).) Fees may not be assessed for the processing of requests by criminal justice agencies for criminal history records. For purposes of this section, a "criminal justice agency" refers to any agency within the present definition of criminal justice agency contained in 28 C.F.R. 20.3.

D. DRUG ENFORCEMENT ADMINISTRATION (29 U.S.C. 577(c))

The Title II authorizations for the Drug Enforcement Administration (DEA) (28 U.S.C. 577(c)) provide general authority for the DEA to pay for the conduct of its activities. Special authority is cited for expenditures for the DEA's mission of investigating and prosecuting crimes within its investigative jurisdiction (28 U.S.C. 577(c)(2)). The Committee has previously supported permanent authority for DEA to enter into such contracts.

E. IMMIGRATION AND NATURALIZATION SERVICE (28 U.S.C. 577(d))

The Title II authorizations for the Immigration and Naturalization Service (INS) (28 U.S.C. 577(d)) provide general authority for the INS to pay for the conduct of its activities. Section 577(d) cites eight additional specific authorities that are applicable to the INS. Two of these payments, those for citizenship textbooks and leasing horses from employees (28 U.S.C. 577(d) (1) and (5)), are currently in statute (8 U.S.C. 1555).

The Committee has previously supported five of the remaining six authorities in proposed permanent authorizations. (See Senate Report 98-498.) These five authorities allow payments for work allowances, advances to departing aliens, refunds of maintenance bills, acquisition of land for fences, and expenses for tracking lost persons. (28 U.S.C. 577(d) (2), (3), (4), (6) and (7).)

The Committee has added an eighth authority (28 U.S.C. 577(d)(8)) allowing payments for expenses in detecting and prosecut-

ing crimes within the investigative jurisdiction of the INS. The Committee views specific reference to this authority as appropriate in light of the substantial criminal investigative responsibilities of the INS. This section neither expands nor contracts the investigative jurisdiction of the INS or any other Federal law enforcement agency.

F. BUREAU OF PRISONS (28 U.S.C. 577(e))

The Title II authorizations for the Bureau of Prisons (28 U.S.C. 577(e)) provide general authority for the Bureau to pay for the conduct of its activities. Section 577(e) cites five additional specific authorizations that are applicable to the Bureau. The Committee has previously supported making four of these five provisions part of permanent law. (See Senate Report 98–498, p. 22.) Those provisions relate to construction at prison farms; the use of convict labor for construction; assistance to state and local governments; and the purchase of farm products. (28 U.S.C. 577(e) (2), (3), (4) and (5).)

The Committee has included an additional permanent provision, 28 U.S.C. 577(e)(1), that provides authority for operating prisons, supervising U.S. prisoners in non-Federal institutions, and providing inmate legal service. This authority is included in the Department's 1980 Authorization Act (Public Law 96–132) and has been available to the Bureau for the past seven years.

G. UNITED STATES MARSHALS SERVICE (28 U.S.C. 577(f))

The Title II authorizations for the United States Marshals Service (28 U.S.C. 577(f)) provide general authority for the Marshals Servcie to pay for the conduct of its activities. Section 577(f) cites eight additional specific authorities that are applicable to the Marshals Service. Three of these authorities recodify existing authorities in 28 U.S.C. 567. These three authorities relate to the payment of office expenses; the transportation of prisoners; and the payment of their necessary expenditures. (28 U.S.C. 577(f) (1), (3) and (8).)

A fourth authorization is based on the Marshals' authority to "command all necessary assistance to execute their duties." (28 U.S.C. 569(b).) This authority allows the Marshals to enter into personal services contracts for security guards and for the service of process, other than warrants. (28 U.S.C. 577(f)(7).)

The Committee has previously supported permanent authority for the Marshals' supervision of U.S. prisoners in non-Federal institutions (Senate Report 98–498, p. 25), and this authority is included as 28 U.S.C. 577(f)(5).

The Committee has included a permanent authority for the Marshals Service to engage in the construction of safe sites for federally protected witnesses. (28 U.S.C. 577(f)(6).) This authority has routinely been included in the Department's appropriations acts.

The Committee has included a permanent authority for the Marshals Service to operate and maintain seized vehicles. (28 U.S.C. 577(f)(4).) This provision gives the Marshals Service, which supervises the assets forfeiture program, the same authority to use seized vehicles that is given to the FBI, the DEA and the INS under substantive seizure statutes.

The original Administration request for permanent financial authorizations for the Marshals Service did not include any affirmative statement of the Marshals' duties and responsibilities with respect to the Federal judiciary. Because serving the judiciary is a principal function of the Marshals Service, the Committee decided to include an additional authorization that directly addressed this duty, and to modify an existing statutory authority to again highlight this responsibility.

The Committee has, accordingly, included section 577(f)(2), which authorizes the payment of "necessary expenses in attending to the safety and decorum of judicial proceedings." The Committee has also modified the Marshals Service's existing statutory authority to pay other necessary expenses (28 U.S.C. 569(b)) to state that expenditures may be paid that are "necessary in the performance of its [the Marshals Service's] performance of its responsibilities to the Judicial and Executive Branches."

H. UNDERCOVER AUTHORIZATIONS AND EXEMPTIONS (28 U.S.C. 578)

Background

On July 28, 1978, Acting Attorney General Benjamin R. Civiletti wrote to the Committee regarding certain legal problems that had arisen with respect to the FBI's use of undercover operations.[2] As the Acting Attorney General explained:

> The Department of Justice recognizes, of course, that these operations must themselves be conducted in accordance with all applicable law. . . . [L]egal questions which arise in the course of these operations are examined both in the FBI and in various parts of the Department of Justice. . . .
>
> In the course of studying the legality of these operations, we have discovered several legal problems, arising out of the requirements relating to government procurement or the handling of public funds, which present substantial obstacles to the continued effective performance of undercover operations. . . . [U]nless corrective legislation is enacted these legal problems will require that current and proposed major operations be terminated, be substantially reduced in scope, or adopt practices that substantially reduce their effectiveness.

The Acting Attorney General submitted to the Committee a memorandum that identified three areas of legal difficulty.[3]

The first set of legal problems arose from the requirement that all funds received by a government agent must be deposited in the Treasury. (31 U.S.C. 3302.) This required that all the gross receipts of a business conducted as part of an undercover operation must be deposited in the Treasury and, consequently, that all costs of doing

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[2] See Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee, 95th Congress, 2d Session, Part 2, page 248. Hereafter, "Hearings, Part 2."

[3] See Memorandum for the Attorney General dalted July 27, 1978, from John M. Harmon, Assistant Attorney General, Office of Legal Counsel; "Legislation Regarding FBI Undercover Operations." (Reproduced at Hearings, Part 2, page 250.)

business must be paid from the FBI's appropriated funds. Without authority to use business receipts to offset business costs, the FBI would have only limited financial ability to operate undercover businesses, i.e., only to the extent that the FBI's appropriations were sufficient to fund all of the business expenses of the undercover operation.

The second set of legal problems arose from the prohibition against depositing government funds in commercial banks. (18 U.S.C. 648 and 31 U.S.C. 3302.) Although the Department had concluded that limited exceptions could be made to this prohibition, it was clear that large sums of cash could not lawfully be placed in a commercial bank. Without the ability to place large sums of money in a commercial bank undercover agents would be unable to establish their credibility in seeking to engage in criminal transactions, such as the purchase of stolen securities. At the time of the Acting Attorney General's letter, four major undercover operations would have been threatened by compliance with the restriction on the use of commercial banks.

The third set of legal problems arose from three categories of statutes limiting a government agency's ability to enter into certain types of real property leases. The first category prohibited leases whose term extended beyond the end of the fiscal year. (31 U.S.C. 1341(a) and 41 U.S.C. 11(a).) The second category prohibited leases in the District of Columbia unless a specific appropriation had been made for that purpose. (40 U.S.C. 34.) The third category required that certain clauses be placed in any lease entered into by the government. (41 U.S.C. 22, 254(a) and 254(c).) An agent acting in an undercover capacity could not require a lessor to conform to these requirements without virtually ensuring that his undercover status would be compromised.

Initial Undercover Authorizations

At the time of the Acting Attorney General's letter, the Committee was considering the first formal authorization bill for the Department of Justice. The Committee included in that legislation a provision exempting undercover operations conducted in fiscal 1979 from the statutes cited by the Acting Attorney General, provided that the Director of the FBI and the Attorney General (or the Deputy Attorney General) certified that such an exemption was necessary. (Public Law 95-624, Section 18.)

The following year, the Committee included these same exemptions in the Department's 1980 Authorization Act (Public Law 96-132, Section 7). In addition, the Committee authorized the FBI to establish or acquire proprietory corporations as part of an undercover operation without being required to comply with the laws pertaining to the establishment of government corporations (31 U.S.C. 9102). The Committee required, however, that advance notification be given to the Comptroller General of the circumstances of any proposed liquidation of a proprietary corporation valued at more than $50,000. As was the case under the 1979 Authorization Act, any proceeds from such a sale were required to be deposited in the Treasury as miscellaneous receipts.

The Committee also included as part of the 1980 Authorization Act a requirement that undercover operations, other than for foreign counterintelligence, be audited once they are closed if their gross receipts exceed $50,000 and if the operation had utilized the Act's exemptions from either government corporation laws (31 U.S.C. 9102) or the prohibition against using receipts to offset expenses (31 U.S.C. 3302). The Committee also required that the Department report to Congress annually regarding the results of these audits. The Committee report states: "The Committee believes that audits are essential, for the income generated from these operations, is in fact, an augmentation of the FBI appropriations." (Senate Report of the Judiciary Committee on DOJ Authorization, Fiscal Year 1980, 96-173, p. 31.)

Subsequent Congressional Action

Congress has not enacted separate authorizing legislation for the Department of Justice since the passage of the Department's 1980 Authorization Act (Public Law 96-132). Nevertheless, the authorizations contained in that Act, including its undercover exemptions, were continued by virtue of their incorporation by reference in subsequent appropriations acts. The first modification of these undercover provisions took place in the Department of Justice Appropriations Act for fiscal 1984 (Public Law 98-166). Three significant changes were made.

On December 31, 1980, Attorney General Civiletti issued Guidelines on FBI Undercover Operations, which, among other things, established an Undercover Operations Review Committee consisting of representatives from both the FBI and the Department. The 1980 Authorization Act said that exemptions would be available only if the Director of the FBI (or the Associate Director) and the Attorney General (or the Deputy Attorney General) certified that use of the exemption was necessary for the conduct of the investigation. The 1984 Appropriations Act amended this requirement by allowing the Director and/or the Attorney General to designate an official to make the necessary certifications on their behalves, provided that any individual so designated was a member of the Undercover Operations Review Committee.

The 1984 Appropriations Act also required the Department of Justice to submit to Congress a detailed annual report on the number of undercover investigations initiated and/or closed during the fiscal year. The Department was also required to report in greater substantive detail about any undercover investigation that had involved "sensitive circumstances"—a term used in the Attorney General's guidelines to describe situations in which a higher level of official approval was needed to conduct an investigation, e.g., investigation of a news person, an elected official, a religious leader, etc.

Finally, the 1984 Appropriations Act provided that any certification of an undercover investigation would remain in effect without regard to the end of the fiscal year. This somewhat technical modification ensured that undercover investigations did not have to be recertified at the beginning of each fiscal year and, more importantly, that the authority to continue ongoing undercover oper-

ations did not lapse during any gap between the termination of one appropriations act and the enactment of a new appropriations act.

The last significant change to these undercover authorizations occurred in the 1985 Appropriations Act (Public Law 98-411). It made authorizations and exemptions granted to the Federal Bureau of Investigation available to the Drug Enforcement Administration. The Act also amended the procedure for certifying the FBI's foreign counterintelligence undercover investigations. The new procedure allowed the Director to delegate his certifying authority only to the Assistant Director of the FBI's Intelligence Division and allowed the Attorney General to delegate his certifying authority only to the Department's Counsel for Intelligence Policy.

Codification of Undercover Authorizations

In 1978, at the time of the Committee's first consideration of the need for undercover exemptions, it was contemplated that any such authorizations would eventually be codified as part of a formal charter for the FBI. Although charter legislation is no longer being actively pursued by the Administration, the Committee remains of the view that formal codification of these undercover authorizations is appropriate.[4] These authorities have now been in existence for 9 years. Although various substantive aspects of undercover investigations have been subject to criticism,[5] the Committee is unaware of any significant criticism of the manner in which these specific authorizations and exemptions have been employed.

The undercover authorizations drafted by the Committee allow such operations to be conducted "in accordance with prevailing commercial practices." It is, therefore, necessary that these operations be exempt from those statutes that would clearly mark an operation as one being undertaken in accordance with "prevailing government agency practices" rather than "prevailing commercial practices."

There are five categories of laws where exemptions are necessary for undercover operations: appropriations laws; Fedeal acquisition laws; Federal property management laws; Federal personnel laws; and government corporation laws. The statute will allow an exemption from any of these laws, provided that the certification of the necessity for the exemption specifies the statutory exemption being sought, and provided further that Congress must be informed of each specific statute as to which exemptions have been granted.

The undercover exemptions drafted by the Committee for the 1979 and 1980 fiscal years were different than those now being proposed for codification in two principal respects. Those earlier authorizations provided exemptions from a certified list of statutes. In drafting its current proposal, the Committee concluded that developing a single comprehensive list of statutes was impractical and that it was more effective and efficient to authorize exemptions to

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[4] The thorough study undertaken by the Senate Select Committee to examine undercover activities of components of the Justice Department concluded that permanent authorization to conduct undercover operation must be accompanied by permanent statutory restrictions on the conduct of those operations. (See Senate Report 97-682.)

[5] See "FBI Undercover Operations", Report of the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary of the House of Representatives, 98th Congress, 2d Session (April 1984).

statutes within certain legal categories and require that Congress be notified whenever a statute was added to the list of statutes for which exemptions were being given.

The other change from prior law is the Committee's addition to section 578(b)(2), limiting the authority of the Attorney General, the FBI Director, and the DEA Administrator to delegate their respective authority for certifying an undercover investigation. The first authorization adopted by the Committee allowed only the Attorney General to delegate his authority, and then only to the Deputy Attorney General. In the 1984 Appropriations Act, both the Attorney General and the FBI Director were allowed to delegate their authority, provided that their designees were members of the Undercover Review Committee.

Rather than rely on the composition of an Undercover Review Committee to limit the possible level of delegation, the Committee has specified the bureaucratic levels below which this authority may not be delegated. These levels are: Deputy Section Chief in the Department's Criminal Division; Deputy Assistant Director in the FBI's Criminal Investigative Division; and Deputy Assistant Administrator in the DEA's Operations Division. The Committee believes that each Department bureau or agency must make certain that any undercover action is necessary and appropriate. While the bureau head or Attorney General may delegate the authority to certify in writing that such an action is necessary, only a senior officer may be entrusted with that responsibility. Such responsibility must not be passed down to line officers. Indeed, the Committee expects the head of the bureau, agency or department to make every effort to prevent any misuse of the authority to undertake undercover operations.

Sunset Provision

While the Committee believes that the undercover authorizations and exemptions contained in this legislation should eventually be made permanent, along with appropriate restrictions on undercover operations, the Committee is not yet prepared to take that step. The Committee has therefore included a sunset provision, which unless later extended or eliminated, will result in the repeal of these undercover authorizations effective October 1, 1989.

The reporting requirements and demand for guidelines contained in this authorization provide additional accountability for the Department's undercover operations. They are an important step that must be instituted before Congress grants permanent authority. The Committee believes that the next 2 years will afford the Committee sufficient time to evaluate the Department's implementation of these authorizations and to assess the need for additional safeguards before making these authorizations permanent.

Publication of Guidelines

One of the principal actions taken by the Committee regarding undercover investigations has been to require in Section 203 that the Attorney General issue comprehensive guidelines for the authorization for undercover operations. When the Committee was first asked in 1978 by Acting Attorney General Civiletti to provide

authorizations and exemptions for undercover investigations, the Committee was assured that "the Department is presently formulating guidelines to cover many aspects of [undercover] operations." (Hearings, Part 2, p. 248.) The Department subsequently issued, and later updated, guidelines for the conduct of FBI undercover operations, many of which have been adopted by the DEA.

The Committee believes that it is now appropriate to require the issuance of guidelines covering all of the Department's undercover operations. These guidelines must be published in the Federal Register for notice and comment. In requiring publication of these guidelines for notice and comment, the Committee is not curtailing Executive discretaion in the formulation of law enforcement policy, nor is the Committee creating any enforceable rights under these guidelines.

Immigration and Naturalization Service and United States Marshals Service

The Committee has provided, with certain additional restrictions, that the undercover authorizations and exemptions that are granted to the FBI and the DEA shall also be available to the Immigration and Naturalization Service (INS) and the United States Marshals Service. The Committee views these authorizations as a means of ensuring that undercover operations are conducted with scrupulous regard for the law. Both the INS and the Marshals Service presently conduct undercover investigations. While the Committee has not been informed of any instance in which either for these agencies has technically violated a statute, the Committee is of the strong view that both agencies would benefit substantially from the institution of formal review processes for evaluating the legality of their undercover operation.

The Committee has also required that the INS and the Marshals present greater detail about an investigation whenever they ask the Attorney General to certify an exemption. Moreover, neither agency may use any of these exemptions until it has issued, and the Attorney General has accepted, guidelines for the authorization of its undercover operations. The Committee intends that the guidelines for the conduct of INS and Marshals Service undercover operations be at least as comprehensive as the guidelines promulgated by the FBI.

Title III.—Additional Permanent Legislation

Title III of S. 938 contains several additional permanent authorizations. With the exception of Section 302, which makes certain technical amendments to criminal procedure statutes, the authorizations contained in Title III are similar in nature to those contained in Title II. Whereas Title II amended Title 28 of the United States Code, Title III amends various sections within Title 18 and Title 22 of the United States Code.

SECTION 301: REFUGEE ASSISTANCE

The Refugee Education Assistance Act of 1980 (Public Law 96–422) was enacted primarily to provide Federal reimbursement for State and local government expenditures for Cuban and Haitian

entrants. Because of the way Section 501(e) of the Act defines Cuban and Haitian entrants, funds provided for this program cannot be applied to Cuban and Haitian entrants who are under "final, nonappealable, and legally enforceable orders of deportation or exclusion." Cuba's refusal to accept repatriation of Cuban entrants ordered deported has made it necessary for assistance to be continued to such individuals. The Committee believes that this authority, which had previously been contained in appropriations acts (See Public Law 99-180), should be continued.

SECTION 302: ASSOCIATE ATTORNEY GENERAL

A number of criminal statutes that require approval of actions within the Department of Justice give that approval authority to the Attorney General or the Deputy Attorney General. These statutes were enacted before the statutory role of the Associate Attorney General was established within the Department of Justice. This section will amend three sections of Title 18 and one section of title 21 by giving the Associate Attorney General the same authority as the Deputy Attorney General. These statutes pertain to racketeering prosecutions, special grand juries, immunity orders and procedures for handling classified information.

In addition, the statute pertaining to the authorization of prosecutions for unlawful flight to avoid prosecution has been amended to give approval authority to the Deputy Attorney General and the Associate Attorney General. Also, a statute pertaining to certain civil rights prosecutions has been amended to allow such prosecutins to be approved by a designated Assistant Attorney General.

SECTION 303: SUPPORT OF UNITED STATES PRISONERS IN NON-FEDERAL INSTITUTIONS (18 U.S.C. 4002A)

This section amends Title 18 of the United States Code by adding a new section that will codify various spending authorizations in connection with the care and safekeeping of prisoners committed to the custody of the United States Marshals Service. Such prisoners are generally housed in state or local detention facilities pursuant to contracts or cooperative agreements.

The authorizations contained in this section have been included routinely in prior appropriations acts as well as in the Department's 1980 Authorization Act (Public Law 96-132). This section also includes the general authority for the Cooperative Agreements Program, under which the Federal government funds the construction of state and local detention facilities in exchange for guaranteed bed space for U.S. prisoners. The Committee has previously supported permanent authorization of that program. (See Public Law 98-621.)

SECTION 304: FEDERAL PRISON INDUSTRIES BOARD OF DIRECTORS (18 U.S.C. 4121)

This section amends an existing statute in Title 18 of the United States Code. The amendment will allow the members of the Board of Directors of the Federal Prison Industries, Inc. to be paid for their actual days of service on the Board. Their rate of pay would

be the daily pay rate equivalent for an employee at the GS–18 level of the General Schedule of pay in 5 U.S.C. 5332.

SECTION 305: FEDERAL PRISON INDUSTRIES GENERAL AUTHORIZATIONS (18 U.S.C. 4129)

This section will codify the basic financial authorization of the Federal Prison Industries, Inc. These authorities have been available in the past on an annual basis. The Committee has made this authority permanent, having previously supported similar permanent authorizations for Federal Prison Industries. (See Senate Report 98–498, p. 22.)

SECTION 306: ADDITIONAL AUTHORIZATIONS FOR THE PAROLE COMMISSION (18 U.S.C. 4204(b))

This section will amend existing financial authorizations for the Parole Commission to include permanent authority for the lease or purchase of passenger motor vehicles. Specific authority, separate from the Department's general authority regarding motor vehicles, is necessary because of the independent status of the Parole Commission within the Department. The Committee has previously supported a similar permanent authorization provision. (See Senate Report 98–498, p. 23.)

SECTION 307: INTERPOL CONFERENCES (22 U.S.C. 263)

This section will amend existing financial authorizations for INTERPOL to permit the United States to sponsor INTERPOL meetings and conferences. The Committee has supported similar provisions in the past. (See Senate Report 98–498, p. 18.)

SECTION 308: PERMANENT AUTHORIZATIONS FOR THE FOREIGN CLAIMS SETTLEMENT COMMISSION (22 U.S.C. 1622(d))

This section will provide permanent financial authorizations for the Foreign Claims Settlement Commission. Similar authorizations have been provided to the Commission routinely on an annual basis. The Committee has previously supported the adoption of similar permanent authorizations. (See Senate Report 98–498, p. 27.)

TITLE IV.—ADDITIONAL AUTHORIZATIONS AND REQUIREMENTS FOR FISCAL YEARS 1988 AND 1989

The Committee continues to believe that reasonable reporting requirements are the most effective means of enhancing the Committee's ability to exercise its proper oversight functions. In Title IV, the Committee has agreed to certain new authorizations requested by the Administration. In each case, however, the Committee has agreed to a 2-year authorization, not a permanent one. Moreover, the Committee has required the Department to submit detailed reports regarding the activities undertaken under these authorizations, which are explained below. Title IV also includes a number of more general reporting requirements.

SECTION 401: GIFT ACCEPTANCE AUTHORITY

The Committee has again agreed to support authority for the Department to accept and use gifts, including in-kind contributions that are consistent with Department Policy, on behalf of the United States to aid in the work of the Department. The acceptance of gifts or in-kind contributions by the Department gives rise to legitimate concerns about possible conflicts of interest. Therefore, the bill requires the Department to adopt regulations that will minimize the possibility of such conflicts. The Committee, nevertheless, believes that it is further appropriate to require that the Attorney General report to the Congress all gifts accepted. The report must also include the Department's rationale for finding that specific gifts do not give rise to a conflict of interest.

SECTION 402: FOREIGN LAW ENFORCEMENT TRAINING

The Federal Bureau of Investigation and the Drug Enforcement Administration have for many years included foreign law enforcement officials in the training sessions they provide for state and local police officers. Although this training occurs primarily in the United States, on occasion, specific training is conducted outside the United States.

The Committee agrees to authorize the type of foreign law enforcement training that has been conducted by the Department in the past. However, in Section 402 the Committee provides a 2-year authorization for such training. This section would make two principal changes in existing practice.

First, the Department would be required to consult with the Department of State regarding foreign police training, and such training could not occur without the concurrence of the Secretary of State. The Committee strongly believes that such coordination is necessary, especially when dealing in the sensitive area of diplomacy and foreign affairs.

Second, the Attorney General would also be required to report annually to Congress about all foreign law enforcement training conducted under this authority. The Committee believes that detailed reports are essential to effective oversight. Moreover, the Committee will rely, to some degree, on these reports in determining whether to renew this authority when it expires after two years.

Finally, the Committee notes that the Department has conducted and continues to conduct foreign law enforcement training under the authority of statutes over which this Committee does not have the primary oversight responsibility. Because the Committee retains oversight responsibility for all Department activities, regardless of their source of funding, the Committee has requested that the Department provide it with copies of any reports on foreign law enforcement training that are submitted to other congressional committees. Such reports should be provided at the same time as they are submitted to the principal oversight committee.

SECTION 403: PRISON SERVICE

The Bureau of Prisons currently enters into contractual relations with private organizations for the care and custody of prisoners.

The Bureau states that its authority to enter into such contracts derives from its general procurement authority. The Administration requested permanent statutory authority for such custodial contracts.

The Committee does not believe that it is appropriate to enact permanent authority for such contracts at this time. The Committee, instead, has provided authority to enter into such contracts during fiscal 1988 and 1989. The Committee has also requested the Attorney General to report annually to Congress on the number of contracts with private, for-profit groups for full detention services. Such reports must provide the name of the contractor, the location of the contractor's facility, the number of prisoners and security levels at each facility, and the cost and duration of each contract.

The Committee believes that the reports requested under this provision will be of significant assistance in deciding whether permanent authority to enter into such contracts is warranted.

SECTION 404: RESALE PRICE MAINTENANCE PROHIBITION

This section prohibits the use of appropriated funds for activities designed to alter the per se prohibition of resale price maintenance under Federal antitrust law. However, the provision is not intended to prohibit a Department employee from testifying before Congress on this matter. This is identical to language that was included in the fiscal 1987 State-Justice-Commerce appropriations act and is included in this year's bill to ensure that the policy adopted by Congress last year will be continued.

SECTION 405: REPROGRAMMING AND REORGANIZATION NOTIFICATION

This section includes the requirement that the Attorney General notify the Committees of reprogramming activities, reorganizations and other changes in appropriations. This provision requires notification under specific circumstances and has been found to be essential to carrying out the Committee's oversight function.

SECTION 406: EVALUATION REPORTS

This section contains the traditional language requiring the Attorney General to perform periodic and annual evaluations of Department operations. As under previous bills, the annual report is required to be sent to the Committee within 6 months after the end of the fiscal year. The provision was generated by the Committee's strong concern about the Department's past delays in forwarding the report. The time frame is designed to provide the Department with sufficient time to gather information and prepare a report. However, it will also ensure that the report is available in time to be useful to the Committee in exercising its oversight responsibilities, particularly its review of the Department's budget request.

SECTION 407: NOTIFICATION OF REFUSAL TO DEFEND THE CONSTITUTIONALITY OF AN ACT

This section continues a requirement that the Attorney General notify both Houses of Congress if the Department declines to enforce any provision of law enacted by Congress. This provision helps to alert Congress that the Senate or House Legal Counsel

might have to defend the constitutionality of a statute. It is also helpful in advising various Senate Committees as to when the Department believes there are defects or serious constitutional questions about legislation, which Congress may then want to amend.

TITLE V.—TABLES OF CHAPTERS AND SECTIONS

Title V contains the technical provisions to amend various tables of chapters and tables of sections within the United States Code to reflect substantive changes in law effected by this act.

Section 501 will amend the table of section for Chapter 301 of Title 18 to reflect the newly added "Section 4002A Support for United States Prisoners in Non-Federal Institutions." This provision should be enacted if Section 303 of S. 938 is enacted.[1]

Section 502 will amend the table of sections for Chapter 307 of Title 18 to reflect the newly added "Section 4129 General Authorizations—Federal Prison Industries, Inc." This provision should be enacted if Section 305 of S. 938 is enacted.

Section 503 will amend the table of chapters for part II of Title 18 to reflect the newly added chapter "Chapter 38 General Authorizations . . . Section 577". This provision should be enacted if Section 201 of S. 938 is enacted.

Section 504 will amend the table of sections for Chapter 37 of Title 18 to reflect the repeal of Section 567 of Title 18 pertaining to the "Expenses of Marshals." The table will now reflect Section 567 as "Repealed." This provision should be enacted if Section 206 of S. 938 is enacted.

Section 505 will create a table of sections for the newly created Chapter 38 of Title 18. The table of sections will reflect to new statutes: "Section 577 General Authorizations" and "Section 578. Authorizations and Exemptions Available for Undercover Investigative Operations." This provision should be enacted if Section 201 of S. 938 is enacted.

V. REGULATORY IMPACT STATEMENT

In compliance with Paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the Committee has concluded that the bill will have no regulatory impact.

VI. COST OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 30, 1987.

Hon. JOSEPH R. BIDEN, Jr.,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 938, the Department of Justice Appropriation Authorization Act, Fiscal Years 1988 and 1989.

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[1] Section 303 of the bill, i.e., the section appearing between Sections 302 and 304, is misnumbered as Section 305.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD M. GRAMLICH.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 938.

2. Bill title: Department of Justice Appropriation Authorization Act, Fiscal Years 1988 and 1989.

3. Bill status: As ordered reported by the Senate Committee on the Judiciary, April 8, 1987.

4. Bill purpose: S. 938 would authorize appropriations for the Department of Justice of $5.3 billion for fiscal year 1988 and $5.7 billion for 1989. Appropriations to date for fiscal year 1987 total $4.3 billion.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1988	1989	1990	1991	1992
Authorization level:					
Specified	5,122	5,414			
Estimated	167	307			
Total estimated authorization	5,289	5,721			
Estimated outlays	4,369	5,451	946	224	16

The costs of this bill fall within budget function 750—except for $1 million in authorizations and outlays for the Foreign Claims Settlement Commission in budget function 150, and the costs of civilian pay raises and retirement, which fall in budget functions 920 and 950.

Basis of Estimate:

The estimate assumes that the Congress will appropriate the full amounts authorized prior to the start of each fiscal year. Increases in pay, retirement, and other employee benefits of approximately $47 million in 1988 and $167 million in 1989 were estimated based on the baseline pay raise assumptions. This estimate also includes an estimated authorization of $120 million for 1988 and $140 million for 1989 for the assets forfeiture fund, the CBO baseline levels. The estimated authorization level does not include direct spending items authorized by current law, such as the immigration legalization program. The outlay estimate is based on the historical spending rates for the various activities.

6. Estimated cost to state and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts and Mitch Rosenfeld.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12, Rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 938, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new material is printed in italic; and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * * * *

TITLE 8—ALIENS AND NATIONALITY

§§ 1435–End

Chapter
12. Immigration and Nationality 1101
13. Immigration and Naturalization Service 1551

CHAPTER 13—IMMIGRATION AND NATURALIZATION SERVICE

Sec.
1551. Immigration and Naturalization Service.
1552. Commissioner of Immigration and Naturalization; office.
1553. Assistant Commissioners and one District Director; compensation and salary grade.
1554. Special immigrant inspectors at Washington.
1555. [Immigration Service expenses] *Repealed.*
1556. Transferred.
1557. Prevention of transportation in foreign commerce of alien women and girls under international agreement; Commissioner designated as authority to receive and preserve information.

[§ 1555. Immigration Service expenses

[Appropriations now or hereafter provided for the Immigration and Naturalization Service shall be available for payment of (a) hire of privately-owned horses for use on official business, under contract with officers or employees of the Service; (b) pay of interpreters and translators who are not citizens of tne United States; (e) distribution of citizenship textbooks to aliens without cost to such aliens; (d) payment of allowances (at such rate as may be specified from time to time in the appropriation Act involved) to aliens, while held in custody under the immigration laws, for work performed; and (e) when so specified in the appropriation concerned, expenses of unforeseen emergencies of a confidential character, to be expended under the direction of the Attorney General, who shall make a certificate of the amount of any such expenditure as he may think it advisable not to specify, and every such certificate shall be deemed a sufficient voucher for the sum therein expressed to have been expended.]

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

* * * * * * *

CHAPTER 13—CIVIL RIGHTS

Sec.
241. Conspiracy against rights of citizens.
242. Deprivation of rights under color of law.
243. Exclusion of jurors on account of race or color.
244. Discrimination against person wearing uniform of armed forces.
245. Federally protected activities.
246. Deprivation of relief benefits.

§ 245. Federally protected activities

(a)(1) Nothing in this section shall be construed as indicating an intent on the part of Congress to prevent any State, and possessing or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which it would have jurisdiction in the absence of this section, nor shall anything in this section be construed as depriving State and local law enforcement authorities of responsibility for prosecuting acts that may be violations of this section and that are violations of State and local law. No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General [or], the Deputy Attorney General, *the Associate Attorney General or any Assistant Attorney General specially designated by the Attorney General* that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice, which function of certification may not be delegated.

(2) Nothing in this subsection shall. * * *

* * * * * * *

CHAPTER 49—FUGITIVES FROM JUSTICE

Sec.
1071. Concealing person from arrest.
1072. Concealing escaped prisoner.
1073. Flight to avoid prosecution or giving testimony.
1074. Flight to avoid prosecution for damaging or destroying any building or other real or personal property.

§ 1073. Flight to avoid prosecution or giving testimony

Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid prosecution, * * *

* * * * * * *

Violations of this section may be prosecuted only in the Federal judicial district in which the original crime was alleged to have been committed, or in which the person was held in custody or confinement, or in which an avoidance of service of process or a contempt referred to in clause (3) of the first paragraph of this section is alleged to have been committed, and only upon formal approval in writing by the Attorney General, *the Deputy Attorney General, the Associate Attorney General,* or an Assistant Attorney General of the United States, which function of approving prosecutions may not be delegated.

* * * * * * *

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Sec.
1961. Definitions.
1962. Prohibited activities.

1963. Criminal penalties.
1964. Civil remedies.
1965. Venue and process.
1966. Expedition of actions.
1967. Evidence.
1968. Civil investigative demand.

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act * * *

* * * * * * *

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, *the Associate Attorney General of the United States,* any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

* * * * * * *

CHAPTER 216—SPECIAL GRAND JURY

Sec.
3331. Summoning and term.
3332. Powers and duties.
3333. Reports.
3334. General provisions.

§ 3331. Summoning and term

(a) In addition to such other grand juries as shall be called from time to time, each district court which is located in a judicial district containing more than four million inhabitants or in which the Attorney General, the Deputy Attorney General, *the Associate Attorney General,* or any designated Assistant Attorney General, certifies in writing to the chief judge of the district that in his judgment a special grand jury is necessary because of criminal activity in the district shall order a special grand jury to be summoned at lease once in each period of eighteen months unless another special grand jury is then serving. The grand jury shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court upon a determination of the grand jury by majority vote that its business has been completed. If, at the end of such term or any extension thereof, the district court determines the business of the grand jury has not been completed, the court may enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of section 3333 of this chapter.

* * * * * * *

PART III—PRISONS AND PRISONERS

CHAPTER 301—GENERAL PROVISIONS

Sec.
4001. Limitation on detention; control of prisons.
4002. Federal prisoners in State institutions; employment.
4002A. Support of United States Prisoners in non-Federal Institutions.
4003. Federal institutions in States without appropriate facilities.
4004. Oaths and acknowledgments.
4005. Medical relief; expenses.
4006. Subsistence for prisoners.
4007. Expenses of prisoners.
4008. Transportation expenses.
4009. Appropriations for sites and buildings.
4010. Acquisition of additional land.
4011. Disposition of cash collections for meals, laundry, etc.
4012. Summary seizure and forfeiture of prisons contraband.

§ 4002A. Support of United States Prisoners in non-Federal Institutions

The Attorney General or his designee is authorized to make payments from appropriations available for the Support of United States Prisoners in Non-Federal Institutions for:

"(1) necessary clothing;

"(2) medical aid and necessary guard hire;

"(3) payment of rewards for assistance in the capture or information leading to the capture of a federal fugitive; and

"(4) entering into contracts or cooperative agreements with any State, territory, or political subdivision thereof, for the necessary construction, physical renovation and acquisition of equipment, supplies, or materials required to establish acceptable conditions of confinement and detention services in any state or local government which agrees to provide guaranteed bed space for federal detainees within that correctional systems, in accordance with regulations issued by the Attorney General and which are comparable to the regulations issued under 18 U.S.C. 4006, except that amounts made available for this purpose shall not exceed the average amortized per-inmate-cost of constructing similar confinement facilities for the federal prison population; and, provided further that the availability of such federally assisted facility shall be assured for housing federal prisoners, the per diem rate charged for housing such federal prisoners shall not exceed allowable costs, and the service provided meets other conditions specified in the contract or cooperative agreement.

* * * * * * *

CHAPTER 307—EMPLOYMENT

Sec.
4121. Federal Prison Industries; board of directors.
4122. Administration of Federal Prison Industries.
4123. New industries.
4124. Purchase of prison-made products by Federal departments.
4125. Public works; prison camps.
4126. Prison Industries Fund; use and settlement of accounts.
4127. Prison Industries report to Congress.
4128. Enforcement by Attorney General.
4129. General authorization—Federal Prison Industries, Inc.

§ 4121. Federal Prison Industries; board of directors

"Federal Prison Industries", a government corporation [of the District of Columbia,] shall be administered by a board of six directors, appointed by the President to serve at the will of the President [without compensation]. *Members of the board who are not employees of the Federal Government or the District of Columbia shall be paid for their services at the daily equivalent of the rate payable for GS-18 of the General Schedule in section 5332 of Title 5, United States Code.*

The directors shall be representatives of (1) industry, (2) labor, (3) agriculture, (4) retailers and consumers, (5) the Secretary of Defense, and (6) the Attorney General, respectively.

* * * * * * *

§ 4129. General authorizations—Federal Prisons Industries, Inc.

"Federal Prison Industries, Incorporated, is authorized to make such expenditures and to make such contracts and commitments, without regard to fiscal year limitation, as may be necessary in carrying out the program set forth in the budget for the current fiscal year for such corporation, including purchase and hire of passenger motor vehicles.

* * * * * * *

CHAPTER 311—PAROLE

Sec.
4201. Definitions.
4202. Parole Commission created.
4203. Powers and duties of the Commission.
4204. Powers and duties of the Chairman.
4205. Time of eligibility for release on parole.
4206. Parole determination criteria.
4207. Information considered.
4208. Parole determination proceeding; time.
4209. Conditions of parole.
4210. Jurisdiction of Commission.
4211. Early termination of parole.
4212. Aliens.
4213. Summons to appear or warrant for retaking of parolee.
4214. Revocation of parole.
4215. Appeal.
4216. Young adult offenders.
4217. Warrants to retake Canal Zone parole violators.
4218. Applicability of Administrative Procedure Act.

§ 4204. Powers and Duties of the Chairman

(a) The Chairman shall—

* * * * * * *

(b) The Chairman shall have the power to—

(1) without regard to section 3324(a) and (b) of title 31, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation educational institution, or nonprofit organization;

* * * * * * *

(8) utilize the services, equipment, personnel, information, facilities, and instrumentalities with or without reimbursement therefor of other Federal, State, local, and private agencies with their consent.

(9) the lease or purchase of passenger motor vehicles.

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TITLE 18—APPENDIX IV

CLASSIFIED INFORMATION PROCEDURES ACT

Sec.
1. Definitions.
2. Pretrial conference.
3. Protective orders.
4. Discovery of classified information by defendants.
5. Notice of defendant's intention to disclose classified information.
6. Procedure for cases involving classified information.
7. Interlocutory appeal.
8. Introduction of classified information.
9. Security procedures.
10. Identification of information related to national defense.
11. Amendments to Act.
12. Attorney General guidelines.
13. Reports to Congress.
14. Functions of Attorney General exercised by Deputy Attorney General, *The Associate Attorney General*, or designated Assistant Attorney General.
15. Effective date.
16. Short title.

§ 14. Function of Attorney General exercised by Deputy Attorney General, *the Associate Attorney General,* or designated Assistant Attorney General

The functions and duties of the Attorney General under this Act may be exercised by the Deputy Attorney General, *the Associate Attorney General,* or by an Assistant Attorney General designated by the Attorney General for such purpose and may not be delegated to any other official.

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TITLE 21—FOOD AND DRUGS

CHAPTER 13—DRUG ABUSE PREVENTION AND CONTROL

SUBCHAPTER I—CONTROL AND ENFORCEMENT

Part E—Administrative and Enforcement Provisions

Sec.
871. Attorney General.
872. Education and research programs of Attorney General.
873. Cooperative arrangements.
874. Advisory committees.
875. Administrative hearings.
876. Subpenas.
877. Judicial review.
878. Powers of enforcement personnel.
879. Search warrants.
880. Administrative inspections and warrants.
881. Forfeitures.
881. A production control of controlled substances.
882. Injunctions.

883. Enforcement proceedings.
884. Immunity and privilege.
885. Burden of proof; liabilities.
886. Payments and advances.

21 USC 884. Immunity and privilege

(a) Refusal to testify

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify * * *

* * * * * * *

(c) Request by United States attorney

A United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, *the Associate Attorney General,* or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) of this section when in his judgment—

(1) the testimony or other information from such individual may be necessary to the public interest; and

(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

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TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

CHAPTER 7—INTERNATIONAL BUREAUS, CONGRESSES, ETC.

Sec.
261. Policy as to settlement of disputes and disarmament.
262. President's participation in international congresses restricted.
262a. Contributions to international organizations; consent of State Department; reports to Congress; limitations as to certain organizations.
262b. Commitments for United States contributions to international organizations; limitations; consultation with congressional committees.
262c. Commitments for United States contributions to international financial institutions fostering economic development in less developed countries; continuation of participation.
262d. Human rights and United States assistance policies with international financial institutions.
262d-1. Congressional statement of policy of human rights and United States assistance policies with international institutions.
262e. Comparability of salaries and benefits of employees of international financial institutions with employees of American private business and governmental service.
262f. Promotion of development and utilization of light capital technologies and United States assistance policies with international financial institutions.
262g. Human nutrition in developing countries and United States assistance policies with international financial institutions; declaration of policy.
262g-1. Targeting assistance to specific populations.
262g-2. Establishment of guidelines for international financial institutions.
262g-3. International negotiations on future replenishments of international financial institutions; consultation with appropriate Members of Congress.
262h. Opposition by United States Executive Directors of international financial institutions to assistance for production of export commodities in surplus on world markets.
262i. Export opportunity enhancement; communication and dissemination of information respecting.
262j. Use of renewable resources for energy production.
262k. Financial assistance to international financial institutions; considerations and criteria.
262l. Multilateral Development Banks.

263. International Prison Commission.
263a. International Criminal Police Organization.
264, 265. Omitted.
266. International commission of congresses of navigation; authorization of appropriation for expenses.
266a. Transferred.
266b. Repealed. June 11, 1940, ch. 306, 54 Stat. 263.
267. Permanent Commission of International Geodetic Association; representative of United States.
267a. Appointment of delegates; compensation.
267b. International Joint Commission; invitation to establish; personnel; duties.
268. International Joint Commission; salaries; powers.
268a. Repealed. Pub. L. 89-554, 8(a), Sept. 6, 1966, 80 Stat. 650.
268b. Advances from appropriation "Boundary line, Alaska and Canada, and the United States and Canada".
269. Permanent Association of International Road Congresses; authorization of annual appropriations for membership.
269a. Central Bureau of the International Map of the World on the Millionth Scale; authorization of appropriations.
269b. Omitted.
269c. International Statistical Bureau at the Hague; authorization of appropriations.
269d. Inter American Statistical Institute; authorization of appropriations.
269e. Omitted.
269f. International Bureau for the Protection of Industrial Property; authorization of appropriations.
269g. Private International Law Conference at The Hague and Private Law International Institute in Rome; membership; appointment of delegates.
269g-1. Authorization of appropriations.
269h. International Union for the Publication of Customs Tariffs; authorization of annual appropriations for expenses.
270 to 270g. Repealed. Pub. L. 88-619, 3, Oct. 3, 1964, 78 Stat. 995.
271. International Labor Organization; membership.
272. Omitted.
272a. Authorization of appropriations.
272b. Loyalty check on United States personnel.
273. Pan American Institute of Geography and History; authorization of annual appropriations for membership.
274. International Council of Scientific Unions and Associated Unions; authorization of annual appropriations for membership.
274a. International biological program.
274b. Cooperation of Federal and non-Federal departments, agencies, and organizations; transfers of funds.
275. International Hydrographic Bureau.
275a. Permanent International Commission of the Congresses of Navigation; authorization of appropriations.
276. Bureau of Interparliamentary Union; American group; authorization of appropriations; disbursements.
276a. Reports to Congress by American group.
276a-1. Conference of the Interparliamentary Union; appointment of delegates from House of Representatives; Chairman; Vice Chairman.
276a-2. Conference of the Interparliamentary Union and all other parliamentary conferences; appointment of delegates from Senate; Chairman; Vice Chairman.
286a-3. Executive secretary of American group of Interparliamentary Union.
276a-4. Auditing of accounts of House and Senate delegations to the Interparliamentary Union; finality and conclusiveness of certificate of Chairman 276b. Repealed. Pub. L. 95-45, 4(d)(4), June 15, 1977, 91 Stat. 223.
276c. Designation of Senate delegates to Conferences of the Interparliamentary Union.
276c-1. Reports of expenditures by members of American groups or delegations and employees; consolidated reports by Congressional committees; public inspection.
276c-2. Employee benefits for United States citizen-representatives to International Monetary Fund, International Bank for Reconstruction and Development, Inter-American Development Bank, Asian Development Bank, African Development Fund, African Development Bank, and Inter-

American Investment Corporation; Treasury Department as collecting, accounting, and depositing agency for employee payments; contributions from appropriations funds.
276c-3. Personnel practices.

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§ 263. International Prison Commission

The United States shall continue as an adhering member of the International Prison Commission and participate in the work of said commission.

The Secretary of the Treasury be, and he is hereby, authorized annually to pay the pro rata share of the United States in the administration expenses of the International Prison Commission and the necessary expenses of a commissioner to represent the United States on said commission at its annual meetings, together with necessary clerical and other expenses, out of any money which shall be appropriated for such purposes from time to time by Congress.

The Attorney General or his designee is also authorized to make payments from Department of Justice appropriations for expenses necessary to host, at intervals of ten years or longer, the annual meeting of the General Assembly of INTERPOL and to periodically sponsor INTERPOL conferences on topics of international crime.

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CHAPTER 21—SETTLEMENT OF INTERNATIONAL CLAIMS

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
1621. Definitions.
1622. Establishment of Commission.
1622a. Transfer of Foreign Claims Settlement Commission of the United States to Department of Justice.
1622b. Transfer of functions, powers, and duties of Foreign Claims Settlement Commission of the United States.
1622c. Membership of Foreign Claims Settlement Commission of the United States.
1622d. Appointment and compensation of officers and employees of Foreign Claims Settlement Commission of the United States; allowances and benefits; utilization of other Federal facilities.
1622e. Vesting of all non-adjudicatory functions, powers, and duties in Chairman of Foreign Claims Settlement Commission of the United States.
1622f. Administrative support and services to Foreign Claims Settlement Commission of the United States by Attorney General.
1622g. Independence of Foreign Claims Settlement Commission of the United States; finality of Commission decisions.
1623. Claims.
1624. Certification of awards; certification of claims.
1625. Omitted.
1626. Payments.
1627. Creation of special funds in Treasury.

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§ 1622d. Appointment and compensation of officers and employees of Foreign Claims Settlement Commission of the United States; allowances and benefits; utilization of other Federal facilities

The Commission is authorized, in accordance with civil service laws and in accordance with title 5 to appoint and fix the compen-

sation of such officers and employees as may be necessary to carry out the functions of the Commission. The Commission is authorized to employ experts and consultants in accordance with section 3109 of title 5 without compensation or at rates of compensation not in excess of the maximum daily rate prescribed for GS–18 under section 5332 of title 5. Notwithstanding any other provision of law, the Commission is further authorized to employ nationals of other countries who may possess special knowledge, languages, or other expertise necessary to assist the Commission. The Commission is authorized to pay expenses of packing, shipping, and storing personal effects of personnel of the Commission assigned abroad, and to pay allowances and benefits similar to those provided by title IX of the Foreign Service Act of 1946, as amended. The Commission is authorized, with the consent of the head of any other department or agency of the Federal Government, to utilize the facilities and services of such department or agency in carrying out the functions of the Commission. Officers and employees of any department and agency of the Federal Government may, with the consent of the head of such department or agency, be assigned to assist the Commission in carrying out its functions. The Commission shall reimburse such department and agency for the pay of such officers or employees.

The Commission is authorized to hire passenger motor vehicles, for field use only, and to purchase insurance for official motor vehicles used abroad. The Commission may advance funds abroad and may advance funds to other government departments or agencies in connection with reimbursable agreements. The Commission is also authorized to employ aliens abroad and, with the approval of the Secretary of State, to acquire necessary office space and living quarters abroad, and to maintain, repair, furnish and provide utilities for such properties.

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TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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PART II—DEPARTMENT OF JUSTICE

Chapter	Sec.
31. The Attorney General	501
33. Federal Bureau of Investigation	531
35. United States Attorneys	541
37. United States Marshals	561
38. General Authorizations—Department of Justice	*567*

CHAPTER 38—GENERAL AUTHORIZATIONS—DEPARTMENT OF JUSTICE

Sec.
557. General Authorizations.
578. Authorizations and Exemptions Available for Undercover Investigative Operations.

§ 577. General Authorizations—Department of Justice

(a) The Attorney General is authorized to use Department of Justice appropriations to make payments for the conduct of the activities of the Department of Justice. Such payments may include payments for:

(1) expenses, mileage, compensation, and per diem in lieu of subsistence, of witnesses as authorized by law, without regard to the competitive procurement requirements of Title 15 and Title 41, United States Code; provided that no witness shall be paid more than one attendance fee for any one calendar day;

(2) advances of public moneys under 31 U.S.C. 3324; provided that travel advances to law enforcement personnel engaged in undercover activity shall be deemed public monies within the meaning of 31 U.S.C. 3527;

(3) planning, acquisition of sites and construction of special purpose law enforcement type facilities; and construction, operation, remodeling and repair of law enforcement type buildings and facilities used for law enforcement purposes; and the purchase of necessary equipment and the payment of necessary expenses directly related to the conduct of these activities;

(4) the lease or purchase of passenger motor vehicles; provided that motor vehicles for police type use may be purchased for law enforcement purposes without regard to the general purchase price limitation for the fiscal year during which such a purchase is effected;

(5) the purchase of firearms and ammunition for use by law enforcement officers and trained security personnel, and the participation in firearms competitions;

(6) the confidential lease of surveillance sites for law enforcement purposes;

(7) the acquisition, lease, maintenance and operation of aircraft for law enforcement purposes;

(8) miscellaneous and emergency expenses authorized or approved by either the Attorney General, the Deputy Attorney General or the Associate Attorney General.

(9) official reception and representation expenses;

(10) attendance at meetings;

(11) services of experts and consultants as authorized by 5 U.S.C. 3109 and at rates of pay for individuals up to but not exceeding the daily rate payable for GS–18 of the General Schedule in 5 U.S.C. 5332;

(12) services of interpreters and translators who are not citizens of the United States;

(13) payment of rewards, the purchase of evidence and payment for information in connection with law enforcement;

(14) the purchase of insurance for motor vehicles, boats and aircraft operated in official government business in foreign countries; and

(15) benefits for employees serving overseas as authorized under section 901(3), (5), (6), (8), (9), (15) and section 904 of the Foreign Service Act of 1980 (22 U.S.C. 4081(3), (5), (6), (8), (9), (15) and 22 U.S.C. 4084), and under the regulations issued by the Secretary of State.

(b)(1) The Attorney General is authorized to use appropriations for the Federal Bureau of Investigation to make payments for the conduct of its activities. Such payments may not be used to pay the compensation of any employee in the competitive service but may include payments for:

(A) expenses necessary for the detection and prosecution of crimes against the United States;

(B) protection of the person of the President of the United States and the person of the Attorney General;

(C) investigations regarding official matters under the control of the Department of Justice and the Department of State, as may be directed by the Attorney General; and

(D) acquisition, collection, classification and preservation of identification and other records and their exchange with, and for the official use of, the duly authorized officials of the Federal Government, of States, cities and such other institutions, as authorized by law, such exchange to be subject to cancellation if dissemination is made outside the receiving departments on related agencies.

(2) The Federal Bureau of Investigation may establish and collect fees for the processing of noncriminal employment and licensing fingerprint cards. Such fees shall represent the full cost of furnishing the service. The funds collected shall be credited to the Salaries and Expenses, Federal Bureau of Investigation appropriation without regard to 31 U.S.C. 3302(b), and shall be available, to the extent specified in appropriations acts, until expended, to pay for salaries and other expenses incurred in operating the FBI Identification Division. No fee shall be assessed in connection with the processing of requests for criminal history records by criminal justice agencies for criminal justice purposes or for employment in criminal justice agencies.

(c) The Attorney General is authorized to use appropriations for the Drug Enforcement Administration to make payments for the conduct of its activities. Such payments may include payments for:

(1) expenses necessary for the detection and prosecution of crimes against the United States within its investigative jurisdiction; and

(2) contracting with individuals for personal services abroad; provided that such individuals shall not be regarded as employees of the United States for the purpose of any law administered by the Office of Personnel Management.

(d) The Attorney General is authorized to use appropriations for the Immigration and Naturalization Service to make payments for the conduct of its activities. Such payments may include payments for:

(1) distribution of citizenship textbooks to aliens without cost to such aliens;

(2) allowances to aliens for work performed while held in custody under the immigration laws;

(3) cash advances to aliens for meals and lodging upon departure from the United States;

(4) refunds of maintenance bills, immigration fines and other items properly returnable, except deposits of aliens who become public charges and deposits to secure payment of fines and passage money;

(5) the lease of horses from officers or employees of the Service;

(6) acquisition of land as sites for enforcement fences, and expenses incident to the construction of such fences;

(7) expenses and allowances incurred in tracking lost persons, as required by public exigencies, in aid of State or local law enforcement agencies; and

(8) expenses necessary for the detection and prosecution of crimes against the United States within its investigative jurisdiction.

(e) The Attorney General is authorized to use appropriations for the Bureau of Prisons to make payments for the conduct of its activities. Such payments may include payments for:

(1) the administration, operation, and maintenance of Federal penal and correctional institutions, including supervision and support of United States prisoners in non-Federal institutions; and for inmate legal services within the Federal prison system;

(2) construction of buildings at prison camps and acquisition of land as authorized by 18 U.S.C. 4010;

(3) the labor of United States prisoners performed in the construction or remodeling of prison buildings or facilities;

(4) assistance to State and local governments to improve their correctional systems; and

(5) the purchase and exchange of farm products and livestock.

(f) The Attorney General is authorized to use appropriations for the United States Marshals Service to make payments for the conduct of its activities. Such payments may include payments for:

(1) the actual and necessary expenses associated with the offices established under section 561 of this title;

(2) necessary expenses in attending to the safety and decorum of Judicial proceedings;

(3) the expense of transporting prisoners, including the transportation between the United States and foreign countries of persons charged with crime, and including the cost of necessary guards and the travel and subsistence expenses of prisoners and guards;

(4) the operation and maintenance for officials use of vehicles seized and forfeited to the United States Government;

(5) the supervision of United States prisoners in non-federal institutions;

(6) expenses incurred for the use of facilities in the protection of witnesses and in the planning, acquisition, construction, renovation, maintenance, remodeling, and repair of buildings and the purchase of equipment incident thereto for protected witness safesites;

(7) expenses incurred pursuant to contracts and cooperative agreements for security guards and for the service or summonses on complaint, subpoenas and notices in lieu of service by U.S. Marshals or Deputy Marshals; and

(8) such other expenditures as may be necessary in the performance of its responsibilities to the Judicial and Executive Branches.

(g) As used in this section the term "law enforcement" refers to the activities of the Federal Bureau of Investigation; the Drug Enforcement Administration; the Immigration and Naturalization Service; the Bureau of Prisons; and the United States Marshals Service; except that for the purposes of subsection (a)(3), "law enforcement" refers only to the activities, in the United States, of the

Bureau of Prisons and, subject to the provisions of 8 U.S.C. 1252(c) and 18 U.S.C. 4003, of the Immigration and Naturalization Service.

§ 578. Authorizations and Exemptions Available for Undercover Investigative Operations

(a) The authorizations and exemptions provided below may be utilized for undercover operations conducted by the following bureaus of the Department of Justice: the Federal Bureau of Investigation and the Drug Enforcement Administration. As used herein, the head of a bureau refers, respectively, to the Director of the Federal Bureau of Investigation and the Administrator of the Drug Enforcement Administration.

(b)(1) An exempt undercover operation refers to any operation designed and necessary to detect and prosecute crimes against the United States as to which the head of a bureau, or his designee, and the Attorney General, or his designee, have certified in writing that any action authorized by this section is necessary for the conduct of that undercover investigation.

(2) The designee of the Attorney General, or any alternate designee, must be an official in a position of, or a position superior to that of, a Deputy Section Chief of the Criminal Division. The designee of the Director of the Federal Bureau of Investigation, or any alternate designee, must be an official serving in a position of, or a position superior to that of, a Deputy Assistant Director of the Criminal Investigative Division. The designee of the Administrator of the Drug Enforcement Administration, or any alternate designee, must be an official serving in a position of, or a position superior to that of, a Deputy Assistant Administrator of the Operations Division.

(3) An exempt undercover operation also refers to any operation of the Federal Bureau of Investigation designed and necessary to collect foreign intelligence or to conduct foreign counter intelligence, as to which the Director of the Federal Bureau of Investigation, or the Assistant Director of the Intelligence Division if so designated by the Director, and the Attorney General, or the Counsel for Intelligence Policy if so designated by the Attorney General, have certified in writing that any action authorized by this section is necessary for the conduct of that undercover investigation.

(4) The type of exemptions sought for each operation shall be specified on the certification and the use of the exemptions for each operation will be reviewed during the operation by the official designated by the head of the bureau pursuant to subsection (b)(1) or (2) of this section.

(c)(1) Appropriations may be used for purchasing or leasing property, buildings, facilities, space, goods, insurance, licenses and any equipment necessary to establish and/or operate an undercover operation. These acquisitions shall be made in accordance with prevailing commercial practices so long as such practices are consistent with the purposes of the undercover operation. Laws applicable to federal acquisitions, federal property management and federal appropriations shall not apply to any acquisition for an exempt undercover operation where compliance with such laws would risk compromise of the undercover nature of the investigation.

(2) Appropriations may be used to establish, acquire and/or operate proprietary corporations or business entities in accordance with prevailing commercial practices so long as such practices are consistent with the purposes of the undercover operation. Laws applicable to federal personnel, federal appropriations and government corporations shall not apply to any transaction for an exempt undercover operation where compliance with such laws would risk compromise of the undercover nature of an investigation.

(3) The Attorney General shall, within ninety days of the effective date of this statute, and annually thereafter, transmit to Congress a report listing all federal personnel, federal acquisition, federal property management, federal appropriation, and government corporation laws as to which a determination has been made that compliance with such laws would risk compromise of the undercover nature of an investigation. The Attorney General shall, consistent with maintaining the security of ongoing undercover investigation, promptly report to Congress regarding any determination that compliance with additional federal personnel, federal acquisition, federal property management, federal appropriation, or government corporation laws would risk compromise of the undercover nature of an investigation.

(4) Appropriations and the proceeds from an exempt undercover operation may be deposited and in banks or other financial institutions and may be used to offset necessary and reasonable expenses incurred in such operation without deposit in the Treasury; provided that, as soon as any such proceeds are no longer necessary for the conduct of such operation, such proceeds or the balance of such proceeds remaining at the time shall be deposited in the Treasury of the United States as miscellaneous receipts.

(d) If a corporation or business entity established or acquired as part of an undercover operation under subparagraph (2) of paragraph (c) with a net value of over $150,000 is to be liquidated, sold, or otherwise disposed of, the head of the bureau, as much in advance as he or his designee determines is practicable, shall report the circumstances to the Attorney General. The proceeds of the liquidation, sale or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as miscellaneous receipts.

(e)(1) The Attorney General shall direct and supervise a detailed financial audit of each undercover investigative operation which is closed in fiscal year 1988, and each fiscal year thereafter, and shall, not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

(2) For purposes of these audit and reporting requirements:

(A) the term "closed" refers to the point in time at which—

(i) all criminal proceedings (other than appeals) are concluded, or

(ii) covert activities are concluded, whichever occurs later;

(B) the term "undercover investigative operation" and "undercover operation" mean any undercover investigative operation of a bureau (other than a foreign counterintelligency undercover investigative operation)—

(i) in which—

(a) the gross receipts (excluding interest earned) exceed $150,000, or

(b) expenditures (other than expenditures for salaries of employees) exceed $150,000, and

(ii) which is exempt from laws applicable to federal appropriations and government corporations.

(f) The Attorney General shall submit a report annually to the Congress specifying, as to the Federal Bureau of Investigation and the Drug Enforcement Administration:

(i) the number, by programs, of undercover investigative operations pending as of the end of the one-year period for which such report is submitted,

(ii) the number, by programs, of undercover investigative operations commenced in the one-year period preceding the period for which such report is submitted, and

(iii) the number, by programs, of undercover investigative operations closed in the one-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained. With respect to each such closed undercover operation which involves any of the sensitive circumstances specified in the Attorney General's Guidelines on Federal Bureau of Investigation Undercover Operations, such report shall contain a detailed description of the operation and related matters, including information pertaining to—

(I) the results,

(II) any civil claims, and

(III) identifications of such sensitive circumstances involved, that arose at any time during the course of such undercover operation.

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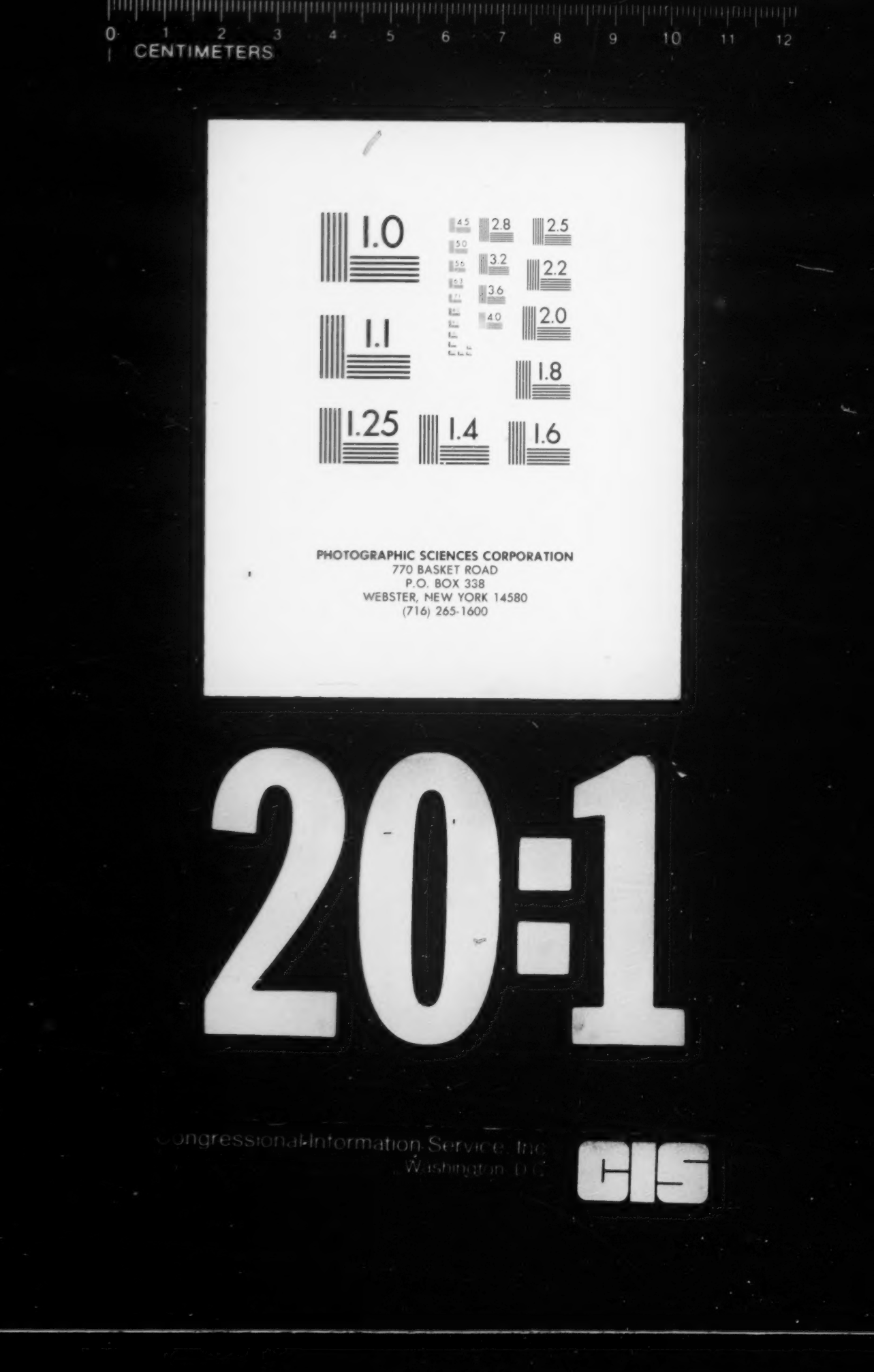
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